

1 A As best as I can recall, yes.

2 Q But it was a -- was it a relatively small file
3 cabinet?

4 A It was a, it was a two-drawer gray metal standard
5 file cabinet.

6 Q In early 1994 did you get an additional file
7 cabinet?

8 A No. I got a larger file cabinet and had the two-
9 drawer file cabinet removed from my office.

10 Q So, for the year 1993 you had a two-drawer file
11 cabinet, is that correct?

12 A Yes.

13 Q In your office?

14 A Yes.

15 Q And you made a file for the calendars, is that
16 correct?

17 MR. HOWARD: Objection. That's, that's a mischar-
18 acterization of what the witness has testified. It may -- if
19 that's -- if it's being offered to say is this -- that this is
20 what she said, then that's not --

21 MS. SCHMELTZER: I'm, I'm not offering it to --

22 MR. HOWARD: I withdraw the objection.

23 WITNESS: Do you want me to --

24 BY MS. SCHMELTZER:

25 Q Did you make a file for the calendars?

1 A I, I know there was a file in the file cabinet that
2 was for personal calendars, yes.

3 Q Do you recall what the label was on that file?

4 A I think it said personal calendars."

5 Q Now, was the purpose of getting the file cabinet to
6 organize things so you could find them more easily?

7 A Yes.

8 Q And in June of 1993 --now let's go back to the docu-
9 ment production request -- you said you reviewed your files in
10 connection with the discovery efforts, is that correct?

11 MR. HOWARD: Your Honor, I object to further inquiry
12 on the document production request without the document pro-
13 duction request being presented in evidence in this proceed-
14 ing. It should be in evidence. If she's going to be cross-
15 examined on, on what that was, it should be, it should be
16 admitted into evidence.

17 MS. SCHMELTZER: She's not being examined on the
18 substance of the document -- I haven't asked her any question
19 about any particular categories in the document production
20 request.

21 JUDGE SIPPEL: Well, what, what is the information
22 that you're seeking to ascertain if she's explained in her
23 direct testimony how she went about doing all these things?

24 MS. SCHMELTZER: I'm, I'm getting there, Your Honor.

25 JUDGE SIPPEL: Well, I am certainly not going to

1 draw any conclusions adverse to this witness with respect to
2 honoring the document request if it's not before her. She's
3 doing the best she can from her recollection. I'm trying to
4 move this along, Mr. Howard. We could, we could defer it till
5 after lunch on this line, but I, I don't see where you're
6 being prejudiced. I'm certainly not going to hold it against
7 this witness if she's missed something that turns up to be in
8 the -- in, in the document requests and it's not placed before
9 her. Do you understand?

10 MR. HOWARD: Understood, Your Honor, yes.

11 JUDGE SIPPEL: All right. You may proceed, Ms.
12 Schmeltzer, to a, to a degree. You may proceed. We're not
13 making too much progress here.

14 MS. SCHMELTZER: Do you recall sending the calendars
15 to Baker & Hostetler in June of 1993, Ms. Barr?

16 MR. HOWARD: Objection.

17 MR. GREENEBAUM: Which calendars, Your Honor? We --

18 MS. SCHMELTZER: The calendars of yourself, Ms.
19 Velleggia, and Mr. Kleiner.

20 JUDGE SIPPEL: Yeah, that's a good point. Let's
21 keep these very specific. All right. Can you answer that
22 question?

23 WITNESS: Yes, I can. I, I now know today that I
24 sent those calendars in June of 1993. But if you're asking me
25 did I recall doing that at some point in time, it's a pretty

1 hard question to answer. I know that I sent them today be-
2 cause I know there is a memo, a cover memo, that went with the
3 calendars.

4 MS. SCHMELTZER: And in fact you knew you sent the
5 calendars much earlier than today, isn't that --

6 MR. GREENEBAUM: Your Honor, I want to object to --
7 unless she makes clear what calendars, some of those --

8 BY MS. SCHMELTZER:

9 Q Ms. Barr, do you recall being questioned about your
10 calendar at your deposition on July 16, 1993?

11 A Well, generally, yes. Not specifically.

12 Q No, I don't mean specifically.

13 A Yes.

14 Q Now, Ms. Barr, I'd like to show you a copy of the
15 document that's dated June 25, 1993. It's to Dave Roberts
16 from Emily Barr and it's labelled "Request for Documents."

17 MS. SCHMELTZER: And, Your Honor, I'd like to have
18 this marked for identification as Four Jacks Exhibit 31?

19 JUDGE SIPPEL: How many pages?

20 MS. SCHMELTZER: One page.

21 JUDGE SIPPEL: The reporter will mark that document
22 for identification as Four Jacks 31.

23 (Whereupon, the document referred to
24 as Four Jacks Exhibit No. 31 was
25 marked for identification.)

1 MS. SCHMELTZER: It says Exhibit 1 up in the right-
2 hand corner. That's because it was attached to a -- another
3 exhibit which is going to come in later.

4 JUDGE SIPPEL: All right. The witness is ready for
5 a question.

6 BY MS. SCHMELTZER:

7 Q Ms. Barr, I'd like to -- like you to look at what's
8 been marked for identification as Four Jacks Exhibit 31, and
9 would you tell me if, if you prepared this memo?

10 A It's from me. Yes, I, I did.

11 Q You prepared it?

12 A (No audible response.)

13 Q And this was sent to Dave Roberts at -- and he was
14 at Baker & Hostetler, is that correct?

15 A That's correct.

16 Q And you sent the memo on June 25, 1993?

17 A That's the date on the memo.

18 Q And it says, "Re: Request for Documents." Was this
19 memo sent to Mr. Roberts in response to a request that you
20 received for documents from him?

21 MR. HOWARD: Objection, Your Honor. There's --
22 we're enveloped in very privileged matters here and we've --
23 your previous ruling had been that to the extent that the
24 information is revealed in the documents that were offered by
25 Scripps Howard in connection with its Motion for Summary

1 Decision to cross-examination on those document was appropri-
2 ate, but now it's -- it is -- I grant you I don't see a great
3 deal of harm in the answer to this question, but I am very
4 concerned about opening the door to broader inquiries into
5 attorney-client privilege -- any broader inquiry into
6 attorney-client privilege than is absolutely necessary and I
7 don't --

8 MS. SCHMELTZER: Well --

9 MR. HOWARD: -- see the relevance.

10 MS. SCHMELTZER: Your Honor, the document says --

11 MR. HOWARD: Exactly. The document says that and --

12 MS. SCHMELTZER: Says that.

13 JUDGE SIPPEL: Well, I, I mean, I'm going to, I'm
14 going to sustain the objection to the point of its -- this is
15 just -- it's just taking too long. I mean, this Exhibit 31
16 from Emily Barr to Dave Roberts explains very specifically
17 what Emily Barr did on the 25th of June.

18 BY MS. SCHMELTZER:

19 Q And, Ms. Barr, on -- is it -- if you will look at
20 the document, did you attach the original calendars of Arnold
21 Kleiner, Maria Velleggia, and yourself to this document and
22 send them to Mr. Roberts at Baker & Hostetler?

23 A Yes, I did.

24 Q And I notice that this document was cc'd to Mr.
25 Kleiner, Mr. Schroeder, and Mr. Gardner. Did copies go out to

1 | them as well?

2 | A As far as I know, yes.

3 | MR. HOWARD: Copies of what?

4 | MR. GREENEBAUM: Copies of what, Your Honor?

5 | WITNESS: Did you --

6 | MS. SCHMELTZER: Oh, copies of the memo. Did you
7 | also get -- did you also send them copies of the attachments?

8 | WITNESS: No, I did not. It was generally my prac-
9 | tice to send them a copy of the cover memo only.

10 | MS. SCHMELTZER: All right.

11 | (Off the record. On the record.)

12 | BY MS. SCHMELTZER:

13 | Q Okay. Now, under the phrase personal calendars, it
14 | says, "Janet Covington's original notes to me were prepared
15 | specifically for this license challenge issue but she did not
16 | save her actual calendar." So, am, am I correct that you
17 | attached Ms. Covington's original notes to you to this
18 | document?

19 | A That's correct. This is just for the record. This
20 | is not a -- this is a memo.

21 | Q To the memo. That's correct.

22 | JUDGE SIPPEL: Well, when you say this is a memo you
23 | mean the document which has been marked for identification,
24 | Exhibit No. 31?

25 | WITNESS: Yeah. I just, I just get confused

1 sometimes when we refer to what's really a memo from me as a
2 document. I know it's ultimately being entered into the
3 record as a document, I suppose.

4 JUDGE SIPPEL: All right. Well, when you can just
5 refer to it then as Exhibit 31 in your testimony and then it
6 will be very clear on the record what we're talking -- what
7 you're talking about.

8 WITNESS: Okay.

9 JUDGE SIPPEL: Is that it with 31?

10 MS. SCHMELTZER: No.

11 BY MS. SCHMELTZER:

12 Q Now, am I correct that when you sent the -- you sent
13 the originals of the calendars with this memo? Is that, is
14 that accurate?

15 A That's what it says here. Please find the original
16 documents you requested.

17 Q And am I correct that you kept copies of the
18 calendars?

19 A Yes, I did.

20 Q And you sent the original of the notes?

21 A That's correct.

22 Q And am I correct that you don't recall making a copy
23 of the notes?

24 A That's correct.

25 Q When you sent other documents to Baker & Hostetler

1 in response to the Four Jacks' discovery request, am I correct
2 that you sent originals and kept copies?

3 A Well, first of all, I was sending things to Baker &
4 Hostetler. Some of them were in response to the Four Jacks'
5 document request. Some were in response to Baker &
6 Hostetler's request. I can't recall today which was which.
7 So, let me just clarify --

8 Q In --

9 A -- that.

10 Q In, in connection with the documents that you were
11 sending Baker & Hostetler in response to Four Jacks' discovery
12 requests, was it your practice to send the originals and keep
13 copies?

14 A If I was asked for the original, I sent the
15 original.

16 Q And kept a copy?

17 A And kept a copy, yes.

18 Q Now, about the same period of time during June of
19 1993, do you also recall having a conversation with counsel
20 about the fact that Ms. Covington did not have her calendar
21 and that the information had been obtained from her notes?

22 MR. HOWARD: Objection. That's a privileged
23 communication.

24 MS. SCHMELTZER: Well, it's already been -- she's
25 already talked about it at her deposition, counsel.

1 JUDGE SIPPEL: Well, let's -- can you point to
2 something in the --

3 MS. SCHMELTZER: Yes.

4 JUDGE SIPPEL: -- in her testimony or --

5 MS. SCHMELTZER: We'll pass out copies of the
6 deposition.

7 JUDGE SIPPEL: Go off the record till we get the
8 copies.

9 (Off the record. On the record.)

10 JUDGE SIPPEL: You're going to refer the witness to
11 a page of her deposition?

12 MS. SCHMELTZER: The bottom of 47, line 24, contin-
13 uing on to 48, line 13.

14 MR. GREENEBAUM: Perhaps better to read a few lines
15 further.

16 MS. SCHMELTZER: All right. Ms. Barr, if you will
17 refer to the bottom of page 47, line 24, do you recall I asked
18 you: "Did you have any conversation with your counsel -- and
19 I'm not asking you the substance of your conversation, but did
20 you have any conversation in with your counsel in June of 1993
21 as to whether or not the Covington handwritten notes would be
22 relevant to this document request?"

23 Answer: "What I recall having conversation about --
24 I do recall telling counsel that Janet did not have her calen-
25 dar, but -- and that I had -- that I had gotten the informa-

1 tion from notes."

2 Question: "From handwritten notes?"

3 Answer: "From handwritten notes, yes."

4 Question: "And did you tell counsel that you had
5 the handwritten notes?"

6 Answer: "I don't recall -- "

7 And then there was an objection.

8 JUDGE SIPPEL: Well, that information that you just
9 read is, is now, is now in the record. But, again, it -- I
10 don't think that it adds anything to what she's already ex-
11 plained in her written testimony.

12 MS. SCHMELTZER: No. I'm just -- I want to make the
13 point that she -- in addition to the document here, she had a
14 conversation with counsel about the same period of time.

15 WITNESS: I'm sorry. Could you ask --

16 JUDGE SIPPEL: All right. That's all right. I --
17 no, that's -- there's no question pending, so you don't --
18 let's have the next question.

19 BY MS. SCHMELTZER:

20 Q And if you would go over to line -- to page 49, Ms.
21 Barr? Your answer, beginning at line 8, you say, "Well, I
22 don't even know that it was necessarily in response to the
23 document production request. I know that there was -- as I
24 was gathering documents for counsel in anticipation of the
25 hearing and I guess the deposition, I told them that Janet

1 Covington could not -- did not have her calendar and -- no,
2 I'm sorry. Let me rephrase that. I told them that I got the
3 information from notes. But I was asked, at that point in
4 time, to ask Janet if I could have her calendar, her original
5 calendar."

6 Do you recall that?

7 A Um-hum.

8 Q Okay. Now, am I correct that you, you had -- do
9 you, do you recall the conversation that you had with counsel
10 about this matter?

11 A Yeah, I recall generally discussing this with coun-
12 sel.

13 Q And was it about that time in June of 1993 that you
14 called Ms. Covington to see if she had her original calendar?

15 A I called her on a couple of occasions to ask her if
16 she could try to locate a calendar.

17 Q And when you couldn't obtain the calendar from Ms.
18 Covington, am I correct that you sent the -- her original
19 notes to counsel along with the other calendars?

20 A That's what I did in this June 25th memo.

21 MS. SCHMELTZER: Your Honor, I would ask that the
22 June 25th memo, this is Four Jacks Exhibit 31, be received in
23 evidence?

24 JUDGE SIPPEL: Any objection? Hearing none, it's
25 received in evidence. This is Four Jacks Exhibit No. 31.

1 (Whereupon, the document marked for
2 identification as Four Jacks Exhibit
3 No. 31 was received into evidence.)

4 MS. SCHMELTZER: I haven't quite finished with the
5 other exhibit yet, and that's why I'm just holding that for
6 the time being.

7 MR. GREENEBAUM: We have no objection as long as
8 it's -- we have the continuing understanding that we had
9 before that's not a waive of the attorney-client privilege in
10 any way.

11 JUDGE SIPPEL: It, it is -- no, it is not a waiver
12 of the attorney-client privilege, but it certainly -- the
13 information that has been disclosed thus far in Exhibit 31 and
14 in her deposition --

15 MR. GREENEBAUM: No problem with that, Judge.

16 JUDGE SIPPEL: All right. Ms. -- all right.

17 MS. SCHMELTZER: And just to refresh your recollec-
18 tion, Ms. Coving-- Ms. Barr, I'm -- I'd like to refer you to
19 page 118 of your deposition.

20 And I asked you there, "Were all other documents
21 that were forwarded to Baker & Hostetler copied to retain in
22 your files?"

23 JUDGE SIPPEL: Where is this now?

24 WITNESS: What, what line are you --

25 MS. SCHMELTZER: Line -- I'm sorry, it's line 8.

1 We're talking about all, all other documents other than Ms.
2 Covington's notes here?

3 WITNESS: I'm, I'm --

4 JUDGE SIPPEL: Well, let's -- wait, wait a minute.
5 Let's be sure that, that everyone understands it as you see
6 it, Ms. Schmeltzer. Hold on just a second.

7 MR. GREENEBAUM: What is the question, Your Honor?
8 There was no question when she read from 49 till after she
9 read from the deposition. If she wants to put the deposition
10 in for some purpose, that's one thing, but just to read an-
11 swers without a question doesn't seem to have any --

12 JUDGE SIPPEL: What is it that you're trying to
13 accomplish here, Ms. Schmeltzer?

14 MS. SCHMELTZER: I can get to this another way, Your
15 Honor. I can -- Ms. Barr --

16 JUDGE SIPPEL: Let me just say, before you proceed
17 along those lines, I understand Mr. Greenebaum's concern and
18 his point.

19 MS. SCHMELTZER: Yeah.

20 JUDGE SIPPEL: You read something into the record
21 that was from the deposition. It's an excerpt of what this
22 witness testified to. And then there were comments made, and
23 then we're off someplace else and it's --

24 MS. SCHMELTZER: Okay. Let me --

25 JUDGE SIPPEL: -- left there.

1 MS. SCHMELTZER: Yeah. Let me, let me withdraw that
2 --

3 JUDGE SIPPEL: In other words, the reason for using
4 a deposition is to set a premise on which questions are going
5 to be asked. Now, I just want to say, first of all, that I
6 want to be sure that that procedure is followed.

7 Secondly, if Scripps Howard feels that that quoted
8 language left as it is in the abstract needs to be clarified
9 with other pages of the deposition, the record will remain
10 open to -- a reasonable time to permit that.

11 MR. GREENEBAUM: I appreciate that. And what I'm
12 trying to avoid is to have -- burdening the Court with reading
13 10 lines earlier and five lines over because just to read an
14 answer out of context and say didn't you say that is unfair to
15 the record.

16 JUDGE SIPPEL: All right. I, I concur in that
17 observation. So, let's, let's do it as we're supposed to do
18 it.

19 MS. SCHMELTZER: That's fine, Your Honor.

20 MR. GREENEBAUM: Thank you.

21 MS. SCHMELTZER: Well, let me withdraw that
22 question.

23 MR. ZAUNER: Just a point of information. When you
24 withdraw that question you're also withdrawing the portion of
25 the transcript that you read into the record? Because

1 otherwise that's just --

2 MS. SCHMELTZER: At 118 --

3 MR. ZAUNER: Yes.

4 MS. SCHMELTZER: -- but not the previous --

5 MR. ZAUNER: Correct.

6 MS. SCHMELTZER: -- correct.

7 MR. GREENEBAUM: We'll correct 49 if appropriate.

8 JUDGE SIPPEL: Yeah. That's right. My ruling went
9 back to your earlier pages, but -- go ahead.

10 MS. SCHMELTZER: One moment. All right. Now, we
11 were talking about a conversation that you had with counsel in
12 1993 about the production of handwritten notes. Do you recall
13 that, Ms. Barr?

14 MR. GREENEBAUM: Are we, are we now back to the
15 quote she read on page 49?

16 MS. SCHMELTZER: Right.

17 MR. GREENEBAUM: Well, in fairness, and this is why
18 I made my objection, if you look at page 49, Your Honor, the
19 two lines, question and answer, above which she read on line
20 4, "Well, I can't tell you if the discussion was in June
21 specifically, but it was -- "

22 Question: "But it was in response to the document
23 production request." Which she just asked her as a fact.
24 "Well, I don't even know that it was necessarily in
25 response..."

1 So, I mean --

2 MS. SCHMELTZER: I read that --

3 MR. GREENEBAUM: -- if you read that --

4 MS. SCHMELTZER: -- whole passage --

5 MR. GREENEBAUM: -- it's out of context now. She's
6 now saying the document -- the discussion with regard to
7 document request, but when she read it it makes it clear it
8 wasn't necessarily that. She's assuming as a fact as a pre-
9 amble to her question evidence that's, that's not in evidence.

10 JUDGE SIPPEL: All right. Well, let me see, is this
11 in the form of an objection, Mr. Greenebaum?

12 MR. GREENEBAUM: Yes. I'm objecting to the form of
13 the question because the question assumes the conversation she
14 read in was in connection with the discussion pertaining to a
15 document request when the answer she read in makes it clear
16 that it was not necessarily the case.

17 JUDGE SIPPEL: Well --

18 MS. SCHMELTZER: Let me -- I'll, I'll be happy to
19 ask Ms. Barr that question.

20 JUDGE SIPPEL: Well, I didn't -- there's, there's an
21 outstanding --

22 MR. GREENEBAUM: It's already been --

23 JUDGE SIPPEL: There's an outstanding objection.
24 I'm going to, I'm going to overrule the objection. I'm going
25 to, however, consider this evidence in light of the distinc-

1 tion that Mr. Greenebaum is making. But -- so, so far -- as
2 far as the record is concerned, that the -- you haven't ad-
3 vanced the ball too far.

4 MS. SCHMELTZER: Ms. Barr --

5 JUDGE SIPPEL: If you want to ask another question
6 to try and --

7 MS. SCHMELTZER: I do.

8 JUDGE SIPPEL: -- pin this down --

9 MS. SCHMELTZER: I do.

10 JUDGE SIPPEL: -- I'll permit that, as long as,
11 again, we're not going to veer into an effort to get into
12 privileged communications.

13 MS. SCHMELTZER: No, Your Honor.

14 BY MS. SCHMELTZER:

15 Q Ms. Barr, do you recall being deposed in this pro-
16 ceeding on July 16, 1993?

17 A Yes, I do.

18 Q And do you recall Mr. Goldstein ask-- and he was
19 counsel for the Mass Media Bureau, asking you some questions
20 during that deposition?

21 A Generally speaking, yes, I do.

22 Q Do you recall Mr. Goldstein asking you what instruc-
23 tions you were given when you were given a copy of the Motion
24 to Produce Documents?

25 MR. GREENEBAUM: I'm going to object unless we --

1 JUDGE SIPPEL: Sustained.

2 MR. GREENEBAUM: -- look at -- thank you.

3 MS. SCHMELTZER: I'd like to make a -- mark for an
4 exhibit as Four Jacks --

5 JUDGE SIPPEL: You know, what I'm going to do is I'm
6 going to ask the witness to leave the courtroom for a minute.
7 I'm trying -- I want to get a proffer from you as to just
8 where you -- where, where you, where you're --

9 MS. SCHMELTZER: Sure.

10 JUDGE SIPPEL: -- taking us on this. Go off the
11 record.

12 (Off the record.)

13 (Whereupon, the witness was temporarily excused from
14 the courtroom.)

15 (On the record.)

16 JUDGE SIPPEL: What, what I'm hearing is, and I'm
17 not criticizing the, the -- your techniques or how you're
18 going about this, but all this I'm hearing is the same infor-
19 mation that I've been reading in her testimony. I mean, I --
20 I'm not being given anything more to go on in this case by
21 going over this in such finite detail.

22 MS. SCHMELTZER: Well --

23 JUDGE SIPPEL: I'm not sure what it is that you're
24 trying to accomplish.

25 MS. SCHMELTZER: Your Honor --

1 JUDGE SIPPEL: You tell me.

2 MS. SCHMELTZER: Well, first of all, the June 25
3 memo is not attached to her testimony. That's an important
4 memo.

5 JUDGE SIPPEL: That was, that was easy. We went
6 through that one pretty quickly.

7 MS. SCHMELTZER: But she's -- at the same time -- at
8 about the same time that that memo was written there was a
9 conversation with counsel discussing the subject of hand-
10 written notes. There is testimony about that conversation in
11 the July 16th deposition. And yet, on July 13th, we were told
12 the notes don't exist. We were told that at a point in time
13 when we didn't have the June 25 memo, three weeks before that
14 deposition, which showed that the documents did exist.

15 JUDGE SIPPEL: Well, you've established that point.

16 MS. SCHMELTZER: Well, I --

17 JUDGE SIPPEL: I mean, and, and, and you got --

18 MS. SCHMELTZER: I have -- no, I haven't introduced
19 any evidence about the July 16th deposition yet.

20 MR. ZAUNER: Could -- can I ask a clarifying ques-
21 tion? Are you talking about the July 16th -- is that of Emily
22 Louise Barr?

23 MS. SCHMELTZER: Yes.

24 MR. ZAUNER: I -- the date on it that I have is July
25 29th.

1 MS. SCHMELTZER: No, you're looking at 1994.

2 MR. ZAUNER: Oh, I'm sorry.

3 MS. SCHMELTZER: This is --

4 MR. ZAUNER: I'm sorry.

5 MS. SCHMELTZER: -- 1993.

6 MR. ZAUNER: I'm sorry. I took the wrong one.

7 JUDGE SIPPEL: The '93 -- it's the '93 deposition --

8 MR. ZAUNER: Right. I'm sorry.

9 JUDGE SIPPEL: -- and, and which we went over this
10 in, in some great detail in phase I also about that
11 deposition.

12 MS. SCHMELTZER: About that deposition, but not
13 about, not about that specific point about the handwritten
14 notes.

15 JUDGE SIPPEL: About -- all right. That's true.
16 You didn't, you didn't, you didn't have the availability of
17 the, of the handwritten notes at that particular --

18 MS. SCHMELTZER: That's correct.

19 JUDGE SIPPEL: -- point in time. But she's explain-
20 ed in her written testimony what she did with that. You
21 cross-examined her on her deposition and you, you -- she, she
22 brought out the fact as -- that, that she did, she did pass
23 the information along to, to her counsel that she had no --
24 she didn't have a calendar. And as I recall, as I recall, the
25 position that Scripps Howard took right from the beginning was

1 that this is all work product anyway.

2 MS. SCHMELTZER: No. They never asserted --

3 JUDGE SIPPEL: Did I, did I --

4 MS. SCHMELTZER: -- work product.

5 JUDGE SIPPEL: Am I wrong on that? I --

6 MR. HOWARD: With respect to Ms. --

7 JUDGE SIPPEL: With respect to the work that she did
8 with Ms. Covington?

9 MR. HOWARD: Ms. -- absolutely. It's preparation
10 for trial. Work product --

11 MS. SCHMELTZER: The, the note --

12 MR. HOWARD: Pure work product.

13 MS. SCHMELTZER: The notes -- the handwritten notes,
14 they did not --

15 JUDGE SIPPEL: Well, they, they -- no, the hand-
16 written notes, that's true, it was -- they were, you know, not
17 known about -- or, at least, that's what the record
18 reflects --

19 MS. SCHMELTZER: That's correct.

20 JUDGE SIPPEL: -- is that there was no knowledge of
21 that. But as I recall, all this information was being argued
22 as being work product anyway back in that time-frame.

23 MS. SCHMELTZER: No.

24 MR. HOWARD: Yes, it was. Oh, absolutely.

25 MS. SCHMELTZER: Not the --

1 JUDGE SIPPEL: That was my recollection.

2 MS. SCHMELTZER: -- handwritten notes.

3 MR. HOWARD: Well, that's --

4 MS. SCHMELTZER: There was no --

5 MR. GREENEBAUM: We didn't know about those. Had we
6 known about it, we'd have argued that too with the others.

7 MR. HOWARD: When we knew they were there it was al-
8 ready after the Judge had ruled that the next link in the
9 chain from Ms. Covington -- since we didn't have Ms.
10 Covington's notes, we had to produce the, the draft. It was
11 clear from that ruling that Scripps had -- that he saw the
12 need for overcoming any work product objection that Scripps
13 Howard might have raised, that certainly we didn't want any-
14 thing, in the light of -- that had gone before, we -- and, and
15 the, the state of the record at that time, we saw that it was
16 obviously necessary to produce them. But that does mean that
17 they were not work product, because they were quite essential
18 work product.

19 JUDGE SIPPEL: I mean, I -- now, I -- I mean, I
20 think that the Covington notes and the Covington -- all the
21 Covington information, to my mind, is very important in terms
22 of making this record complete. And if, if, if adding the
23 issue prompted the disclosure of that information, for what-
24 ever reason -- rhyme or reason, I'm satisfied that it's time
25 well-spent. But this is a very important -- obviously, this

1 is a very important proceeding. There's a license at stake
2 here. And I still haven't seen this process this morning get
3 me beyond everything that I already don't know.

4 MS. SCHMELTZER: Well, it will.

5 JUDGE SIPPEL: Or everything that I do know. What,
6 what is it that you -- I mean, in terms of going back and
7 going over all of this in such finite detail, what is it that
8 you expect to accomplish?

9 MS. SCHMELTZER: Well, Your Honor, I need to show
10 the chain of events before we get to the discovery of that.

11 JUDGE SIPPEL: Well, she's given that to you.

12 MS. SCHMELTZER: That's right. I'm getting it. And
13 we're almost there. I mean, I -- you know, we've only been,
14 we've only been -- she's only been questioned for less than an
15 hour. We didn't begin till almost -- till about 10:20.

16 JUDGE SIPPEL: Well, I understand that, but you're
17 going -- as they say, what I'm seeing, you're asking her to
18 repeat things in the deposition that she has substantially
19 given to you in the testimony. And if that's going to be what
20 we're going to be doing for the rest of the afternoon, I, I --

21 MS. SCHMELTZER: No, I don't intend to do that.

22 JUDGE SIPPEL: -- we better think about it.

23 MS. SCHMELTZER: I don't intend to do that.

24 JUDGE SIPPEL: Well, how much longer are you going
25 to be focusing on this -- this is your -- you're saying that

1 what you're pursuing now is the chain of events?

2 MS. SCHMELTZER: Right.

3 JUDGE SIPPEL: Leading up to what?

4 MS. SCHMELTZER: The discovery of the notes.

5 JUDGE SIPPEL: The discovery of the -- by whom?

6 MS. SCHMELTZER: By Ms. Barr.

7 JUDGE SIPPEL: And, and where are you now? What
8 point of that chain are you at now?

9 MS. SCHMELTZER: I'm in the summer of 1993.

10 JUDGE SIPPEL: And you have to take it how far?
11 From there until when? Till February --

12 MS. SCHMELTZER: Well, they were discovered in
13 February 1994.

14 JUDGE SIPPEL: February of '94?

15 MS. SCHMELTZER: Right. I'll be happy to try to
16 speed this up.

17 JUDGE SIPPEL: Well, I, I'm -- I, I -- what I'm
18 trying to avoid is, is having to go back -- where, where --
19 you -- as they say, we're just -- she's testifying -- in
20 response to these, to these questions on cross-examination,
21 she's just paraphrasing what she's already testified to, which
22 means that you're asking her questions that will provide her
23 the opportunity to do that. I mean, cross-examination, you're
24 supposed to be getting something new.

25 I, I don't want to argue. I'm sorry. I don't want